IN THE

SUPREME COURT OF THE UNITED STATES.

No. [redacted] 138

OCTOBER TERM, 1962

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the United States District Court for the Southern District of California, Central Division.

JURISDICTIONAL STATEMENT.

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INDEX.

Cases Cited.

Statutes Cited.

Textbooks Cited.

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On Appeal from the United States District Court for the Southern District of California, Central Division.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the United States District Court for the Southern District of California, Central Division, entered on July 14, 1961, requiring the Appellant Union to expel certain of its members and to refuse to readmit such persons to union membership. This statement is submitted to demonstrate the jurisdiction of this Court and the substantial character of the issues involved.

OPINION BELOW.

The opinion below is reported in ... F. Supp. ..., 43 Labor Cases, ¶ 17,085 and is reprinted in Appendix A, *infra*, p. 11. Appendix B, *infra*, p. 30, contains the findings of fact and conclusions of law made by the court below and the judgment entered by the court below.

JURISDICTION.

This civil suit was brought under Section 4 of the Sherman Anti-Trust Act, 15 U. S. C., Sec. 4, to restrain certain activities alleged to be in violation of Section 1 of that Act. The judgment of the court below was entered on July 14, 1961, and a notice of appeal filed on July 26, 1961. An order extending Appellants' time for filing a jurisdictional statement to October 24, 1961, was entered on September 8, 1961. A copy of the order extending time for filing the Jurisdictional Statement has been filed with this Court. The jurisdiction of this Court to review the judgment below, by direct appeal, is conferred by 15 U. S. C., Secs. 28 and 29 and 49 U. S. C., Secs. 44 and 45; and such jurisdiction is customarily exercised. *E. g., Timken Roller Bearing Co. v. United States*, 341 U. S. 593; *United States v. National Lead Co.*, 332 U. S. 319.

QUESTIONS INVOLVED.

This is a civil action, under the Sherman Anti-Trust Act, to restrain a labor union from engaging in price fixing and customer allocation practices pursuant to an agreement between the union and a group of its truck-driver members known as peddlers. The owner-driver-peddlers are independent contractors even though their only asset is a small equity in a truck and their only skill is the ability to drive a truck. The court below enjoined not only conduct of the type found to be unlawful, but also entered an order requiring the union to expel all such members and to refrain from admitting such persons to membership in the future. The questions presented are whether those portions of the judgment relating to the expulsion and readmission of owner-driver-peddlers:

1. Unlawfully deny to the Appellant its right to determine the conditions of acquiring and retaining membership

in the Union conferred by the Clayton, Norris-LaGuardia and National Labor Relations Acts.

2. Unlawfully deny to the Appellant and its members rights of due process of law and freedom of association.

STATUTES INVOLVED.

The statutes primarily involved are: The Sherman Anti-Trust Act, Sections 1 and 4, 15 U. S. C., Sections 1 and 4; the Clayton Act, Sections 6 and 20, 15 U. S. C., Section 17 and 29 U. S. C., Section 52; the Norris-LaGuardia Act, Section 4, 29 U. S. C., Section 104; and the National Labor Relations Act, Section 8 (b) (1), 29 U. S. C., Section 158 (b) (1). These statutory provisions are set forth in Appendix C, *infra*, p. 55.

STATEMENT.

Appellant, Los Angeles Meat and Provision Drivers Union, Local 626, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (referred to as the "Union") is a labor organization with a membership of approximately 2,400 persons (ff. 1)*. Most of the Union's members are truck drivers engaged in loading, unloading and transporting meat and meat products for packing houses and related employers (ff. 1). Between October, 1954, and May, 1959, the period covered by the complaint, there were 35 to 45 owner-driver-peddlers who were members of the Union (ff. 1). Only four of the owner-driver-peddler union members were joined as parties to this proceeding (ff. 3). Appellant Singer, at all times material, was a business representative but not an officer of the Union (ff. 2).

On May 27, 1959, the Justice Department filed a civil complaint alleging that the Union and its owner-driver-

* "ff." refers to the findings of fact made by the court below upon the stipulation of the parties. The findings of fact are set forth in Appendix B, *infra*, p. 30.

peddler members were engaging in conduct which violated Section 1 of the Sherman Anti-Trust Act, 15 U. S. C., Sec. 1. The parties entered into detailed factual stipulations in which the Union consented to a finding that price fixing and account allocation activities engaged in by the Union and its owner-driver-peddler members were unlawful (ff. 32, 33, 34, 45, 53-55). The Union does not challenge those portions of the decree which restrain price fixing, account allocation and related conduct.

The owner-driver-peddlers purchase grease* from hotels, restaurants and institutions. The owner-driver-peddler then transports the grease in a truck, which he either owns or rents, to the plant of a processor (ff. 5). Owner-driver-peddlers have no established place of business, no employees and no capital investment except a small equity in a truck (ff. 6). Moreover, the owner-driver-peddlers have no skill or special qualifications except the ability to load, unload and drive a truck (ff. 6). Their earnings consist of the difference between the purchase and sale price of grease reduced by the cost of operating a truck (ff. 6), but they are not considered employees of the processor (ff. 5).

During the 1954-1959 period involved in this case, there were eight processors in Los Angeles County (ff. 9), six of whom acquired all or a substantial part of their grease from owner-driver-peddlers (ff. 10). All of the processors employed members of the Union conceded to be bona fide employees (ff. 68), and four of the processors employed employee-union members to pick-up and transport grease from restaurants and other institutions to the processor's plant (ff. 16).

The judgment entered by the court below contains detailed restraints against price fixing, account allocation,

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* "Restaurant grease is waste grease resulting from the preparation of foods in kitchens of restaurants, hotels and institutions" (ff. 7).

and related acts (Judgment, par. V). In addition, the judgment confers rights of visitation to insure future compliance (par. VI). The judgment further requires the Union to expel its owner-driver-peddler members and to refuse to admit such persons to union membership in the future (par. IV).

In ordering the union to expel its owner-driver-peddler members, the court below stated that such persons were not a proper subject of unionization in the absence of proof of competition between the peddlers and employee-members of the Union. And, according to the court below, no "competition" exists in this case. A second reason for requiring the expulsion of the owner-driver-peddlers from the Union was the need, envisioned by the court below, to insure competition *among* the owner-driver-peddlers and to prevent future violations. In this regard, the court below thought cases involving divestiture of illegally acquired stock to be apposite.

SUBSTANTIAL ISSUES ARE PRESENTED.

1. The Union consented to a finding that it engaged in conduct proscribed by the Sherman Act and acknowledges the propriety of a restraining order containing detailed prohibitions against that and similar conduct. But the Justice Department urged and the court below held that it is a function of the anti-trust laws to establish and regulate membership qualifications in labor organizations. This radical departure from Congressional warrant gives rise to the central controversy presented by this case and serves to underscore the need to subject the "relief granted by [the] trial court [to] the most careful scrutiny of this Court . . . to make certain that justice has been done." *International Boxing Club v. United States*, 358 U. S. 242, 253. *See also: United States v. Du Pont De Nemours & Co.*, 6 L. Ed. 2d (Adv.) 318, 323-324.

2. The right to form, join and assist labor organizations is a fundamental one which exists independently of legislative enactment. *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33; *Amalgamated Utility Workers v. Consolidated Edison*, 309 U. S. 261, 263. Since the right involved is the freedom of association, "we deal with a constitutional right . . . included in the bundle of First Amendment rights. . . ." *Louisiana v. NAACP*, 6 L. Ed. 2d (Adv.) 301, 304. Neither the Sherman Act, by its terms, nor any other federal statute purports to "deny to . . . a . . . labor organization the right to determine eligibility to its membership." *Steel v. Louisville & Nashville R. R. Co.*, 323 U. S. 192, 204.

In this case, however, the court below, with singleminded devotion to anti-trust notions, undertook to strip the Union of its owner-driver-peddler members. Thus, for the first time in the long history of anti-trust proceeding against labor unions, this Court has before it an anti-trust injunction which requires a union to expel and refuse readmission to a group of its members.

A union is privileged by both constitutional right and explicit statutory guarantee[1] to decide for itself, free from the interference of the Justice Department, the conditions for membership in the union. Both the National Labor Relations Act, 29 U. S. C., Sec. 141, and the Labor Management Reporting and Disclosure Act, 29 U. S. C., Sec. 401, were carefully limited by the Congress to avoid impinging upon this right.[2] Yet the Justice Department, in

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[1] Section 4 of the Norris La Guardia Act, 29 U. S. C., Sec. 104, singles out for separate condemnation injunctions against "becoming or remaining a member of any labor organization. . . ." See also: Section 8 (b) (1) of the NLRA, 29 U. S. C., Sec. 158 (b) (1), quoted in note 2, *infra*.

[2] For example, the NLRA declares that nothing in Section 8 (b) (1) shall "impair the right of a labor organization to prescribe

this case, has utilized the Sherman Act, a statute which contains no reference to labor unions or union membership, as a device for accomplishing precisely that which the Congress has consciously refrained from doing in statutes dealing particularly with labor unions.[3]

Underlying this attempt is the notion that a union's right to determine its own structure and membership is somehow forfeit if the union engages in conduct violating the anti-trust laws, at least insofar as the members involved in the violation are concerned. In short, it is the assumption of the Justice Department that the federal courts may, upon proof of anti-trust violation, once again govern by injunction unfettered by the Clayton, Norris-LaGuardia and National Labor Relations Acts. Such a notion is a war with common sense, the hard-won declarations of Congressional policy embodied in these Acts, and with this Court's decision in *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, 812.

In *Allen Bradley* a finding of unlawful conduct under the anti-trust laws was affirmed; but those portions of the decree which barred the Union "from doing the very things that the Clayton Act specifically permits union to do" were set aside. 325 U. S. at 812. This Court's opinion and mandate in *Allen Bradley* make it patently clear that in cases in which a union is found to have violated

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its own rules with respect to the acquisition or retention of membership therein. . . ." 29 U. S. C., Sec. 158 (b) (1).

Amendments to the LMRDA which would have established federal statutory regulation of unions with respect to admission to membership were defeated. See: Aaron, "The Labor-Management Reporting and Disclosure Act of 1959," 73 Harv. L. Rev. 851, 860-861.

One may fairly ask what becomes of the specific requirement for a "full and fair hearing" imposed by Section 101 (a) (5) of the LMRDA, 29 U. S. C., Sec. 411 (a) (5), as a condition of expelling union members, if the decree below were upheld.

[3] The court below, contrary to the teaching of *Hartford-Empire Co. v. United States*, 323 U. S. 386, 409, has created "new duties prescription of which is the function of Congress."

the anti-trust laws, the relief to be granted is nonetheless subject to the express limitations embodied in the Clayton Act and the Norris-LaGuardia Acts. If the Justice Department's theory in this case had been applied to the facts in *Allen Bradley*, it presumably would urge the "dissolution" of Local 3 or at least the "divestiture" of *all*, not just its illegal, contractual relations with employer members of the conspiracy.

As this Court observed in *United States v. Hutcheson*, 312 U. S. 219, 231, the Sherman, Clayton and Norris-LaGuardia Acts must be read "as a harmonizing text of outlawry of labor conduct." There are no legislative mandates comparable to the Clayton and Norris-LaGuardia Acts restricting the relief to be granted in cases of illegal stock acquisitions or other monopolistic commercial practices. For this reason, alone, cases dealing with divestiture of illegally acquired stock, relied upon by the court below, have no legitimate role to play. Even in the darkest days of labor law it was not seriously contended that a share of General Motors common stock held by a company, controlled by the Du Pont family, is the legal equivalent of a union card held by a man whose only asset is a small equity in a truck and whose only skill is the ability to drive his truck.[4] To state the comparison is, we submit, to demonstrate that it is untenable. The portions of the decree, entered by the court below, requiring the forfeiture and denial of union membership to owner-driver-peddlers is an obvious attempt to "impose penalties in the guise of preventing future violations." *Hartford-Empire Co. v. United States*, 323 U. S. 386, 409.

3. In determining whether the peddlers "were a proper subject of unionization," the court below found it neces-

[4] Yet the reliance of the Justice Department and the court below upon divestiture precedent can be viewed only as an indication that in their judgment such a comparison can, and in this case must, be made.

sary to consider the unbroken course of decision, in this Court, sustaining a union's right to organize vendors, peddlers and owner-drivers.[5] These cases were dismissed with the legally and factually unsupportable assertion that there was in this case no "competition" between the owner-driver-peddlers and employee members of the Union.

In concluding that "no competition" existed, the court below ignored both the record in this case and the realities of industrial life. Even without the guidance of the Norris-LaGuardia Act,[6] this Court recognized that employees "are bound to be affected by the standard of wages of their trade in the neighborhood." *American Steel Foundries v. Tri-City Council*, 257 U. S. 184, 209. *See also: Thornhill v. Alabama*, 310 U. S. 88, 103 (1940); *Consolidated Terminal Corp. v. Drivers, Chauffeurs & Helpers Local Union 639*, 33 F. Supp. 645, 647-648 (D. C. D. C. 1940). Nor will it suffice to say that since peddlers do not work for "wages", the Union has no legitimate interest in their working conditions. The presence of vendors, peddlers and owner-operators in the transportation field poses an ever-present threat that jobs of employee-members will be removed from the coverage of collective bargaining agreements and transferred to individuals willing to work for less money, longer hours without the protection of workmen's compensation, unemployment compensation and other social legislation. *Milkwagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, 98; *Local 24 v. Oliver*, 358 U. S. 283, 293-295. *See:* Hill, "Teamsters and Trans-

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[5] *Milkwagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91; *Bakery & Pastry Drivers v. Wohl*, 315 U. S. 769; *Local 24 v. Oliver*, 358 U. S. 238.

[6] Under the Norris-LaGuardia Act a labor dispute exists, independently of an employee-member controversy (Sec. 13 (c), 29 U. S. C. 113 (c)), if "persons," not employees, having a "direct or indirect" interest in the same industry are "interested" in the dispute (Sec. 13 (c), 29 U. S. C., Sec. 113 (c)). A broader statutory coverage would be exceedingly difficult to draft.

portation," American Council on Public Affairs, pp. 178-180 (1942). That such a potential exists in this case is conclusively established by the fact that each of the eight processors involved in this case has employees who are members of the Union (ff. 68), and four have employees engaged in the transportation of grease from restaurants and other institutions to the processors' plants (ff. 16).

4. Only four of the 35 to 45 peddlers, subject to expulsion under the decree below, are parties to this proceeding (ff. 1, 3): The contractual (Cf. *International Association of Machinists v. Gonzales*, 356 U. S. 617, 618-619) and statutorily protected (LMRDA, Sec. 101 (a) (5), 29 U. S. C., Sec. 411 (a) (5)) interest of the owner-driver-peddlers in union membership cannot be denied to them, consistently with the requirements of due process of law, unless they are accorded an opportunity to be heard. *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 232-233; *United States v. Du Pont De Nemours & Co.*, 6 L. Ed. 2d (Adv.) 318, 330.

For the foregoing reasons, it is submitted that the questions presented are substantial.

Respectfully submitted.

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APPENDIX "A".

UNITED STATES DISTRICT COURT
Southern District of California,
Central Division.

United States of America, Plaintiff, vs. Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America; Meyer Singer; Lee Taylor; Hubert Brandt; Walter Klein; and Harold Carlis, Defendants.	No. 545-59 WB

MEMORANDUM OF DECISION.

The United States filed its complaint under Section 4 of the Sherman Act (15 U. S. C. A., 4) seeking to prevent and restrain a continuing violation by defendants of Section 1 of the Act (15 U. S. C. A., 1).

The defendant Los Angeles Meat and Provision Drivers Union, Local 626, is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and has its principal place of business in Los Angeles, California. Defendant Meyer Singer is business representative of the Union who actively managed and coordinated the affairs and acts of the grease peddler members of the Union. Defendants Lee Taylor, Hubert Brandt, Walter Klein and Harold Carlis are grease peddler members of the Union.

"Grease peddlers" are defined as independent businessmen who are in the business of buying, transporting and selling waste restaurant grease for their own account. These self-employed peddlers have no established place of business; no employees, except an occasional leader; no capital investment, except a small equity in a truck; no skill or special qualifications except the ability to load, unload and drive a truck. Grease peddlers drive from restaurant to restaurant, picking up small amounts of waste grease in cans and, on the same day, transport and unload the entire collection to one of the processing companies. *Their earnings represent* the difference between the buy and sell price of the waste grease, diminished by the cost of maintaining and operating the truck.

The processing companies who buy the waste restaurant grease from the peddlers then convert it into yellow grease, which they sell either directly to buyers in foreign countries or to buyers in California for shipment to foreign countries. Therefore, any restraint on or disruption in, or interference with, the purchase of waste restaurant grease by peddlers and its sales to processors, and any suppression or elimination of competition in the purchase and sale of waste grease by processors from peddlers, necessarily and directly restrains and affects the flow of yellow grease in foreign commerce.

Prior to 1954, the grease peddlers of Los Angeles were not members of, or in any way affiliated with, any labor union. However, in the fall of 1954, the defendant Singer, a business agent of defendant Union, and certain grease peddlers, caused most of the grease peddlers in Los Angeles County to become members of defendant Union. In soliciting their membership, Union representatives, including defendant Singer, proposed the following plan: The Union would increase the profits of the grease peddlers by increasing the margin between the prices paid

by said peddlers for restaurant grease and the prices they would be paid by processors; grease peddlers would be prevented from soliciting or buying grease from the accounts of other peddlers; the processors would be required to deal only with those grease peddlers who were members in good standing of the Union; and unless grease peddlers became members of the Union, they would have no place to sell their restaurant grease and would be forced out of business.

In October 1954, a majority of grease peddlers in Los Angeles County, including defendants Taylor, Brandt, Klein and Carlis, joined the defendant Union, thereby agreeing to make operative the plan outlined by defendant Singer and other Union representatives.

During the period between October 1954 and May 27, 1959 (the period covered by the complaint), there were in Los Angeles County about 40 to 50 grease peddlers, 35 to 45 of whom were members of defendant Union. After April 1955, these grease peddlers held their membership in a subdivision of the Union known as Local 626-B.

During this same period, there were in Los Angeles County eight processors of yellow grease, six of which acquired all or most of their waste grease from grease peddlers.

The parties filed a stipulation providing that seventy-two facts set forth therein were admitted, required no proof and should be accepted by the court as being true for purposes of the instant action. These facts relate in detail the plan and the activities of the defendants, and support fully the allegations of the complaint that defendants were guilty of price-fixing and elimination of competition in the gathering and sale of waste grease in the Los Angeles area.

It is further stipulated:

1. That the acts of defendants and their co-conspirators constitute a direct, substantial and unreasonable restraint upon foreign trade and commerce in yellow grease;

2. That defendants unlawfully combined and conspired in unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

3. That the court may enter judgment that defendants have violated Section 1 of the Sherman Act as charged in the complaint.

4. That plaintiff is entitled to injunctive relief perpetually enjoining defendants from participating, and from forcing the processors to participate, in any plan the purpose and effect of which is to fix prices and eliminate competition in the peddlers' gathering grease and selling it to processors.

The sole remaining issue in the case is whether the decree should include a provision that the Union be ordered to terminate the membership of peddlers and be perpetually enjoined from accepting peddlers as members, unless they become bona fide employees, and that the peddler defendants be enjoined from holding membership in and participating in the affairs of the Union, unless they become bona fide employees.

Defendants' first argument in opposition to the ouster of peddlers from defendant Union, is that "membership of peddlers in a union does not transform the union into an illegal combination in restraint of trade under the antitrust laws." The proposition thus stated appears to be pointless; inasmuch as plaintiff and defendants have stipulated to the fact that the defendants (including the Union and its peddler members) "*unlawfully combined and conspired in unreasonable restraint of foreign trade*

and commerce in yellow grease in violation of Section 1 of the Sherman Act" (italics added).

The issue at hand is whether, under the facts as stipulated, the court may properly enter a decree compelling the defendant Union to oust its peddler members. Defendants cite many Supreme Court cases which they claim condone a union's taking independent contractors into membership. Therefore, what defendants are presumably arguing is that since there is nothing illegal per se about an independent contractor's joining a Union, this court has no power to compel the expulsion of defendant peddlers from defendant Union.

It may be noted at the outset that the precise issue of whether an independent contractor may properly join a union, appears never to have been before the Supreme Court. At any rate, this issue was not decided in any of the cases cited by defendants in their brief. A reading of these cases discloses that only in the most indirect fashion did the court indicate its views as to the propriety of extending union membership to independent contractors, jobbers, vendors, or the like.

For example, in *Bakery Drivers Local v. Wohl*, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178 (1941), in an effort to compel peddlers (independent jobbers) to join the bakery drivers' union, members of that union had peacefully picketed bakeries from which peddlers obtained their goods, carrying placards with the peddlers' names and a true statement of the union's grievances. The Supreme Court held that a state court injunction against such picketing was an unconstitutional invasion of the right of free speech.

From the facts and the decision of the *Bakery Drivers* case, it may be obliquely inferred that peddlers can join, or properly be coerced to join, a union when they are en-

gaged in the same kind of work as union members and *compete* with the members, thus lowering the working conditions and wages of the latter.

Another case cited by defendants is *Milk Wagon Drivers' Union v. Lake Valley Farm Products*, 311 U. S. 91, 61 S. Ct. 122, 85 L. Ed. 63 (1940). Here the Supreme Court held there existed a "labor dispute" within the meaning of the Norris-La Guardia Act, and the requirements of this Act not having been met, the District Court had no jurisdiction to grant an injunction, notwithstanding that the suit was based upon alleged violation of the Sherman Act. The *Milk Wagon Drivers'* court did not pass even indirectly upon the question of whether the picketing had a legitimate objective. The only point of the case for the purpose of this discussion is that it furnishes another instance of a union's attempt to compel the joinder of self-employed persons whose activities tend in some manner to compete with the functions of union members, thus affecting unfavorably the wages and employment of the union members.

Upon the basis of the *Bakery Drivers* and *Milk Wagon Drivers'* cases, supra, it may be said that the Supreme Court apparently and impliedly sanctions the union's coercing the joinder of independent contractors, jobbers or vendors (1) if these groups compete with union members by doing the same or similar work; and (2) if the object of having these groups join the union is to eliminate their unfair competition with union members, and the consequent lowering of the wages and working conditions of union members.

In the instant case the facts contained in the stipulation show that neither of these conditions for the proper joinder of independent contractors with a labor union is present.

The members of defendant Union (Los Angeles Meat and Provision Drivers Union, Local 626) are truck drivers en-

gaged in loading, unloading and transporting meat and meat products for packing houses and related employers. Every processor of yellow grease in the Los Angeles area has employees who are members of the defendant Union.

The grease peddler defendants are independent, self employed businessmen who purchase waste grease from restaurants and other institutions, and then transport the grease in their own trucks to the processing companies, to whom they sell the grease.

These facts do not show that there is competition between the peddlers and the union employees of the processors. On the contrary, there is no competition between these groups because each is engaged in a different line of work, the peddlers buying grease, transporting and selling it to the processors, and the union members performing other functions for their employers (the processors).

The defendant Union solicited the membership of the peddler defendants not for the purpose of raising the wages and working conditions of the peddlers and the union employees of the processors, but for the sole purpose of increasing the income of the peddlers alone, and enabling the Union, the peddlers and the processors to control the business of purchasing and selling waste grease in the Los Angeles area.

In *United States v. Fish Smokers Trade Council, Inc.*, 183 F. Supp. 227 (S. D. N. Y., 1960), which is quite similar on its facts to the instant case, the court concluded that the jobbers (independent businessmen) were not a proper subject of unionization because, regardless of how the jobbers were characterized, there was no competition between them and the Union employees.

The *Fish Smokers* case involved a suit under Section 4 of the Sherman Act to prevent and restrain continuing violations by defendants of Section 1 of the Act. There

the defendant Union had a total membership of about 700, of which about 75 were jobbers (the counterpart of the peddlers here) who purchased fish from smokehouses for resale to customers. The remaining members of the defendant Union were true employees, a number of whom performed the same function in their capacity as employees of the employer smokehouses, i. e., the employees delivered the fish from the smokehouses to wholesale or retail outlets. The jobbers had joined the Union because of an agreement between the Union and the smokehouses providing that the latter would not sell fish to jobbers who were not Union members. This agreement the Union enforced by threats of strikes against smokehouses refusing to boycott non Union jobbers.

Under these facts, the court concluded that the jobbers were not properly Union members, stating at pages 234 and 235 of 183 F. Supp.:

> "*If the work and functions they* (the jobbers) *performed in the smoked fish industry conflicted with or competed with the work and functions performed by the chauffeur employees of the smokehouses, and affected the hours, working conditions and wages of these men, then regardless of what they called themselves, the jobbers would lawfully be forced into the Union.* However, it is evident that the mere fact that the jobbers worked long hours and at times earned less than the chauffeur employees had no effect on the working conditions or wages of the chauffeurs—other than the inevitable causal effect which demand or lack of demand of smoked fish by the jobbers and their customers would have on its production by the smokehouses and their employees. There was no competition in any respect between the chauffeurs and the jobbers—if any, it was between the smokehouses who sold retail and the jobbers. *Although the physical aspect of the*

work of these two groups is similar, 'the economic and social difference between them lies in the method of compensation and return for their toil.' People v. Distributors Division, 169 Misc. 255, 7 N. Y. S. 2d 185, 187. (Italics added.)

"The demands which were made by the Union of the smokehouses on behalf of the jobbers in 1954 — excepting perhaps that concerning the welfare and pension funds—were purely the demands and requirements of an independent business man having to do with extension of credit, price and discrimination, and not with wages, working conditions or hours of employees. * * *"

Thus, the rationale of the court in the *Fish Smokers* case, supra, appears to substantiate the inference drawn from the two Supreme Court cases discussed earlier, namely, that the membership of so-called "independent contractors" in a labor union is not proper unless the purpose of the membership is to secure better wages and working conditions for all union members through the elimination of competition caused by the fact that the independent contractor and the union employees perform the same function.

However, the true significance of the *Fish Smokers* case is not that it merely states the circumstances under which independent contractors may not properly be forced into a union. Rather, the real importance of this decision lies in the fact that it indicates the result of such a misalliance, which is that the union and the independent contractors have put together a combination in restraint of trade, in violation of the Sherman Act. The court makes this clear by stating at page 229 of 183 F. Supp.:

"There is one principal issue raised by the pleadings and that is whether the jobbers are independent business men as plaintiff maintains and therefore not

a proper subject of unionization; if they are, then it follows that the defendants' alleged activities in forcing them into the Union and into agreements to allocate their customers is an act in restraint of trade within the strictures of the antitrust laws, Allen Bradley Co. v. Local Union No. 3, 325 U. S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939. If, however, these jobbers are a labor group as defendants contend, then their activities are protected by the Clayton and Norris-La Guardia Acts and under Milk Wagon Drivers' Union, etc., v. Lake Valley Farm Products, 311 U. S. 91, 61 S. Ct. 122, 85 L. Ed. 63."

and again at page 234:

"But whether such agreement among the smokehouses, the Union and the jobbers was simply the usual closed shop labor agreement in order 'to see that each of them (the Joiber) earns a living, and that not one guy gets it all * * * and that everyone gets an even break,' as defendant argues, and consequently lawful under the Milk Wagon Drivers' Union decision, or whether it was really a conspiracy masquerading as a labor agreement in order to restrain competition between business men as in Allen Bradley Co. v. Local Union No. 3, supra, * * *, depends on whether the jobbers, although so-called independent business men, were really a labor group."

Defendant peddlers and the defendant Union's employees in this case did not compete with each other. Therefore, the peddlers are not a labor group and are not the proper subject of unionization. Moreover, in this case the peddlers were taken into the defendant Union for the purpose of raising their income and enabling the Union, the peddlers and the processors to put together a combination to control the business of buying and selling waste grease in the Los Angeles area, thereby restraining foreign

commerce in yellow grease in violation of the Sherman Act.

Defendants contend that it is not possible to grant the relief sought by plaintiff because of Section 6 of the Clayton Act [15 U. S. C. A., § 17][1] and Section 4 (b) of the Norris-La Guardia Act [29 U. S. C. A., § 104 (b)].[2]

It has long been settled law that neither the Clayton Act nor the Norris-LaGuardia Act permits labor unions to combine with other, non-labor groups for the purpose of monopolizing trade in violation of the Sherman Act. *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939 (1945); *Columbia River Packers Ass'n v. Hinton*, 315 U. S. 143, 62 S. Ct. 520, 86 L. Ed. 750 (1942).

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1 Title 15 U. S. C. A.

"§ 17. Antitrust laws not applicable to labor organizations.

"The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit; or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

2 Title 29, U. S. C. A.

"§ 104. Enumeration of specific acts not subject to restraining orders or injunctions.

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"* * *

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as described in section 103 of this title;"

In *Allen Bradley Co. v. Local Union No. 3*, supra, the Electrical Workers Union and its members, prompted by the desire to get and hold jobs for themselves at good wages and under high working standards, combined with employers and manufacturers of electrical equipment to restrain competition in, and to monopolize the marketing of, electrical equipment. The Supreme Court held that the Union's activities constituted a violation of the Sherman Act, despite the provisions of the Clayton and Norris-LaGuardia Acts. In this regard, the court made the following pertinent observations at pages 809 and 810 of 325 U. S.:

> "* * * Since union members can without violating the Sherman Act strike to enforce a union boycott of goods, it is said they may settle the strike by getting their employers to agree to refuse to buy the goods. Employers and the union did here make bargaining agreements in which the employers agreed not to buy goods manufactured by companies which did not employ the members of Local No. 3. We may assume that such an agreement standing alone would not have violated the Sherman Act. But it did not stand alone. It was but one element in a far larger program in which the contractors and manufacturers united with one another to monopolize all the business in New York City, to bar all other business men from that area, and to charge the public prices above a competitive level. * * * [W]*hen the unions participated with a combination of business men who had complete power to eliminate all competition among themselves and to prevent all competition from others, a situation was created not included within the exemptions of the Clayton and Norris-LaGuardia Acts* (italics added).
>
> "It must be remembered that the exemptions granted the unions were special exceptions to a gen-

eral legislative plan. The primary objective of all the Anti-trust legislation has been to preserve business competition and to proscribe business monopoly. It would be a surprising thing if Congress, in order to prevent a misapplication of that legislation to labor unions, had bestowed upon such unions complete and unreviewable authority to aid business groups to frustrate its primary objective. *For if business groups, by combining with labor unions, can fix prices and divide up markets, it was little more than a futile gesture for Congress to prohibit price fixing by business groups themselves.* Seldom, if ever, has it been claimed before, that by permitting labor unions to carry on their own activities, Congress intended completely to abdicate its constitutional power to regulate interstate commerce and to empower interested business groups to shift our society from a competitive to a monopolistic economy. *Finding no purpose of Congress to immunize labor unions who aid and abet manufacturers and traders in violating the Sherman Act, we hold that the district court correctly concluded that the respondents had violated the Act*" (italics added).

Columbia River Packers Ass'n v. Hinton, 315 U. S. 143, 62 S. Ct. 520, 86 L. Ed. 750 (1942) is another instance where the Supreme Court held that injunctive relief was not barred by the Norris-La Guardia Act, when a violation of the Sherman Act was involved.

In the instant case, Section 6 of the Clayton Act (15 U. S. C. A. § 17, supra) does not sanction the alliance of the peddler defendants and the defendant Union, because such alliance was not formed for the purpose of "mutual help", but rather for the purpose of enabling the peddlers, the Union and the processors together to obtain control of the waste grease trade in the Los Angeles area, with

consequent restrictions upon the free flow of yellow grease in foreign commerce. As stated in the *Allen Bradley* case, supra, Congress did not intend to permit violations of the Sherman Act to go unpunished merely because a labor union is one of the parties to the unlawful combination condemned by that Act.

Nor does the Norris-La Guardia Act furnish refuge for the defendants. The strikes and picketing here involved are not "labor disputes" within the meaning of the Act: for these disputes grew out of the refusal of some of the processors to buy waste grease only from Union peddlers, and in no way related to the improvement of wages or working conditions of the Union members. The instant case is clearly parallel to the *Columbia Packers* case, supra, in that the disputes centered about the processors' purchase of a commodity (waste grease), and in no wise related to the employer-employee relationship. Therefore, Section 4 (b) of the Norris-La Guardia Act (29 U. S. C. A., § 104 (b); supra), does not prohibit the issuance of a decree which would terminate the membership of grease peddlers in defendant Union.

Defendants assert that this court cannot frame a decree compelling defendant Union to oust its grease peddler members, because such a decree would violate due process by abrogating the contract rights of those who are not parties to the within proceeding.

Defendants' argument runs thus: The defendant Union is affiliated with the International Brotherhood of Teamsters, Chauffeurs and Warehousemen. Both the defendant Union and other unions affiliated with the International Brotherhood, have peddler members. Since neither the International Brotherhood nor its other affiliated unions are parties to this action, a decree of this court ordering the ouster of grease peddlers from the defendant Union, would violate due process by abrogating the

contracts between the absent unions and their peddler members.

To state this argument is to refute it; for how can a decree ordering the defendant Union to expel its grease peddler members, possibly affect the contracts between other unions in the International Brotherhood and their peddler members?

In support of their contention, defendants cite *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197, 59 S. Ct. 206, 83 L. Ed. 126 (1938) and *N. L. R. B. v. Sterling Electric Motors*, 112 F. 2d 63 (9th Cir., 1940). In both of these cases the issue under consideration was whether the National Labor Relations Board had jurisdiction to enter orders affecting vital rights of union members without first giving the union notice or an opportunity to be heard.

This issue is not pertinent in the instant case; for here, the decree terminating the peddlers' membership in the Union would be rendered by a court of the United States and not by an administrative agency, such as the National Labor Relations Board. Furthermore, such a decree would be rendered only after having given the interested parties (Local Union 626, including its grease peddler members) a full hearing. Surely it cannot be seriously contended that the International Brotherhood and its other affiliated unions are "interested parties" to a decree which would terminate only the membership of grease peddlers in Local 626, and would in nowise affect the membership of other peddlers in Local 626, or of grease peddlers or any species of peddlers in any other union affiliated with the International Brotherhood.

The mandatory injunction sought by plaintiff would embody a provision that the Union be ordered to terminate the membership of peddlers in said Union and be perpetually enjoined from accepting peddlers as members thereof, unless they become bona fide employees.

Defendants argue that such a mandatory provision is too vague and broad because it would expel from defendant Union not only the 30 or 40 grease peddler members, but in addition all of the Union's 500 or 600 peddler members.

The term "peddlers" as used throughout this action is defined by sub-paragraph 15, Paragraph IV of the complaint (page 3) as "persons who are self-employed entrepreneurs engaged in the business of buying and selling restaurant grease for their own account from restaurants, hotels, and institutions, transporting said grease in trucks owned or operated by themselves to the plants of processors, and selling such restaurant grease to said processors."

Such a definition certainly excludes all peddler members of defendant Union who deal in any commodity other than waste restaurant grease. Therefore, a decree compelling defendant Union to oust peddlers from its ranks would not be too vague or too broad because it would not affect the membership of any but the *grease* peddlers, whose activities as Union members are stipulated to have contributed to the violation of Section 1 of the Sherman Act.

However, any remaining doubt as to which Union members would be reached by the mandatory injunction, would be quickly dispelled simply by inserting the adjective "grease" before the noun "peddlers" in the final form of the injunction.

Defendants next argue that the proposed mandatory injunction is punitive because the expulsion of grease peddlers from defendant Union is not necessary in order to insure against possible future violations of the Sherman Act by defendants.

In antitrust cases, it is the duty of the court to frame its decree so as to suppress the unlawful practices and to

take such reasonable measures as will preclude their revival. *United States v. Crescent Amusement Co.*, 323 U. S. 173, 65 S. Ct. 254, 89 L. Ed. 160 (1944); *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, 60 S. Ct. 618, 84 L. Ed. 852 (1940).

Accordingly, in recent years the Supreme Court has, upon at least three occasions, approved antitrust decrees providing for dissolution or divestiture in order to put an end to combinations whose activities violated the Sherman Act. *International Boxing Club v. United States*, 358 U. S. 242, 79 S. Ct. 245, 3 L. Ed. 2d 270 (1959); *Schine Theatres v. United States*, 334 U. S. 110, 68 S. Ct. 947, 92 L. Ed. 1245 (1948); *United States v. Crescent Amusement Co.*, 323 U. S. 173, 65 S. Ct. 254, 89 L. Ed. 160 (1944).

In *International Boxing Club v. United States*, supra, the District Court found, as the Government had charged, that defendants had violated §§ 1 and 2 of the Sherman Act by conspiring to restrain interstate trade and commerce in, and, by monopolizing, the promotion, broadcasting and televising of world championship boxing contests. After further hearings on the nature and extent of the relief necessary to protect the public interest, the District Court entered a final judgment dissolving the international boxing clubs, directing the individual defendants to divest themselves of their stock in Madison Square Garden, and granting injunctive relief designed to open up the market in the business of promoting professional world championship boxing matches.

The Supreme Court affirmed the judgment, holding that the relief granted was not beyond the allowable discretion of the District Court.

In United States v. Crescent Amusement Co., supra, the United States brought civil suit against nine affiliated

companies operating motion picture theaters throughout five States, and against eight major distributors of motion pictures, charging them with conspiracy to restrain interstate trade and commerce in motion picture films and to monopolize the exhibition of films in violation of §§ 1 and 2 of the Sherman Act. The District Court found that certain of the defendants had violated the Act, and entered a decree which required, among other things, that the corporate exhibitors divest themselves of ownership of stock or any other interest in any other corporate defendant, and that certain corporate officers resign from their positions. The Supreme Court affirmed the divestiture and resignation provisions of the decree.

In the instant case, the stipulated facts clearly show that before the grease peddlers joined the defendant Union, there was no suppression of competition among them, and that only the support of the Union and the powerful weapons at its command enabled the peddlers and the Union together to destroy free competition in the purchase and sale of waste grease, and to drive several processors out of business.

As long as this association of the peddlers and the Union continues, there is danger that their combined activities will be revived and that further suppression of competition in the yellow grease industry will result. To borrow the language of the Supreme Court in the *Crescent Amusement Co.* case, supra, "The proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future."

Therefore, far from being punitive, a decree terminating the membership of the grease peddlers in defendant Union appears to be the most effective, if not the only means of preventing a recurrence of defendants' unlawful activities.

The decree shall include a provision ordering defendant Union to terminate the membership of its grease peddler members, and perpetually enjoining the Union from accepting grease peddlers as members unless they become bona fide employees. It shall also enjoin the peddler defendants from holding membership in and participating in the affairs of the Union, unless they become bona fide employees.

Counsel for plaintiffs is directed to prepare, serve and lodge findings and judgment in accordance with local rule 7.

Dated June 30, 1961.

Wm. M. Byrne,
United States District Judge

APPENDIX "B".

Charles L. Whittinghill,
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Antitrust Division, Department of Justice,
1602 U. S. Post Office and Court House,
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MAdison 5-7411, Extension 692,
Attorneys for the Plaintiff.

United States District Court,
Southern District of California,
Central Division.

United States of America, Plaintiff, v. Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America; Meyer Singer; Lee Taylor; Hubert Brandt; Walter Klein; and Harold Carlis, Defendants.	Civil Action No. 515-59-WB.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL JUDGMENT.

Findings of Fact.

1. Defendant Los Angeles Meat and Provision Drivers Union, Local 626, transacts business and is found within the Central Division of the Southern District of California. It is a voluntary unincorporated labor organiza-

tion affiliated with and chartered by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, composed of some 2,400 members, most of whom were and are truck drivers engaged in loading, unloading, and transporting meat and meat products for packing houses and related employers. Between October 1954 and May 27, 1959 (the period covered by the complaint herein), from about 35 to about 45 grease peddlers were members of said defendant Union, and after April 1955, they held their membership in a subdivision within said defendant Union known as Local 626-B.

2. Defendant Singer, during the same period, was employed as a business representative of defendant Union. He is not and has not been an officer or an elected official, or executive board member, of defendant Union.

3. Defendants Taylor, Braudt, Klein and Carlis, during said period from October 19, 1954, to May 27, 1959, were grease peddler members of defendant Union.

4. Throughout the period from October, 1954, to May, 1959, inclusive, A. J. Menard was secretary-treasurer of defendant Union, and Charles Rico and Mike Granciel were employed by defendant Union in the capacity of business representatives.

5. During the 1954-1959 period there were in Los Angeles County, California, about 40 to 50 grease peddlers. A grease peddler is a man who purchases restaurant grease primarily from hotels, restaurants and institutions, transports said grease in a truck owned or rented by said grease peddler from the places where he buys the grease to the plant of a grease processor, and sells said grease to said processor. Grease peddlers are independent business men who are engaged in the business of buying, transporting and selling restaurant grease for their own account. They are not employees of the grease processors.

6. These self-employed peddlers have no established places of business, no employees, except an occasional loader, no capital investment except a small equity in a truck, no skill or special qualifications except the ability to load, unload and drive a truck. They drive from restaurant to restaurant picking up small amounts of waste grease in cans and, on the same day, transport and unload the entire collection to one of the processing companies. Their earnings represent the difference between the buy and sell price of the waste grease, diminished by the cost of maintaining and operating the truck.

7. Yellow grease is inedible grease produced primarily by removal of most of the water and solid impurities from restaurant grease. Restaurant grease is waste grease resulting from the preparation of foods in kitchens of restaurants, hotels and institutions.

8. The process by which restaurant grease is converted into yellow grease involves the heating of the restaurant grease to a fluid form, and the extraction therefrom of most of the moisture and solid impurities by straining, settling, evaporation, or centrifuging; or a combination thereof. Restaurant grease is customarily converted into yellow grease on the same day it is delivered to a processing plant, or within twenty-four hours. The yellow grease is usually shipped from the processing plant to buyers thereof as soon as sufficient quantity is accumulated to fill a tank truck.

9. During part or all of the period between 1954 and 1959 there were in Los Angeles County, California, eight companies engaged in the production of yellow grease.

10. Six of these producers of yellow grease, hereinafter referred to as processors, acquired from grease peddlers all, or a substantial part, of the restaurant grease from which their yellow grease was made.

11. The names of these six processors and the periods of time in which they produced yellow grease are as follows:

B & H Processing Company	1954-1959
Washington Rendering Company	1954-1959
Peterson Manufacturing Co.	1954-1959
Allied Grease & Tallow Co.	1954-1956
Star Grease Company	July 1958-1959
Harbor Industrial Sales	Dec. 1955-April 1956

12. The combination and conspiracy alleged in the complaint primarily involved and directly affected foreign trade and commerce in yellow grease produced by the six processors named in paragraph 11 hereof.

13. B & H, Allied, Star and Harbor Industrial Sales purchased from grease peddlers practically all of the restaurant grease used by them in the production of yellow grease. Washington bought from grease peddlers about four-fifths of the restaurant grease used in its production of yellow grease. Peterson, from May, 1956, to August, 1958, purchased from grease peddlers about half of the restaurant grease used in its production of yellow grease. The remainder of the restaurant grease used by Washington and Peterson was purchased directly by them from hotels, restaurants and institutions.

14. The remaining two producers of yellow grease, who operated throughout the 1954-1959 period, were Baker Rendering Company and Western Tallow Processors. They made few, if any, purchases of restaurant grease from grease peddlers and purchased directly from restaurants, hotels and institutions substantially all of the restaurant grease used in their production of yellow grease.

15. Baker, Western Tallow and Peterson, in addition to the production of yellow grease, also collected and processed suet and packing and poultry house by-products into

tallows and fertilizers. Washington also collected and processed poultry by-products into animal feeds.

16. For many years Baker, Western Tallow, Peterson and, to a lesser extent, Washington used the services of employee-truck driver members of defendant Union under union contracts, to pick up and transport the restaurant grease and other meat waste purchased by them directly from hotels, restaurants and institutions. Such purchases and collections were usually made from larger establishments, and grease peddlers usually acquired restaurant grease from smaller establishments and other sources where the supply of restaurant grease was relatively small or irregular in availability.

17. The processors usually sell yellow grease under contracts calling for deliveries of specified quantities on future dates, from 30 to 60 days after the execution of the contracts. The processors then purchase restaurant grease in order to produce the yellow grease they have already contracted to sell and deliver.

18. A substantial part of the yellow grease produced by those processors who purchased restaurant grease from grease peddlers was sold by said processors either directly to buyers in foreign countries or to buyers in California for shipment to foreign countries.

19. A substantial amount of yellow grease produced by Peterson was sold and shipped by Peterson directly to buyers in foreign countries. A substantial amount of yellow grease produced by Washington, B & H, Allied, Star, and Harbor Industrial Sales was sold to Baker Rendering Company and Pacific Vegetable Oil Corporation, and nearly all of the yellow grease so sold to those companies was sold and shipped by them to buyers in foreign countries without further processing or change in composition or form. The yellow grease so purchased by Baker and

Pacific Vegetable Oil was purchased with intent to use said yellow grease in filling orders from foreign countries, and was in fact so used.

20. Nearly all yellow grease sold to Baker Rendering Company and to Pacific Vegetable Oil Corporation is delivered by the processors by tank trucks to storage tanks of the buyers located on piers in the Wilmington or Long Beach harbors. The yellow grease so delivered is transferred from said storage tanks into ships for transportation to foreign countries as soon as sufficient quantities are accumulated to fill orders from foreign buyers. The yellow grease so shipped to foreign countries undergoes no processing or change in form or composition after delivery at the piers, except sufficient heating to facilitate its transfer from storage tanks to ships.

21. Within the period from January, 1957, to February, 1959, Washington, B & H, Star, and Peterson produced about 27,000,000 pounds of yellow grease, of which more than 10,000,000 pounds were sold and shipped in foreign commerce. In addition, substantial amounts of yellow grease were produced by Baker and Western Tallow Processors.

22. Within said period, Washington, B & H, Star, and Peterson purchased from grease peddlers over 23,000,000 pounds of restaurant grease, exclusive of the amount of restaurant grease purchased by Peterson from peddlers in 1957, the amount of which is unknown. In addition, substantial amounts of restaurant grease were acquired by Baker, Western Tallow Processors, Peterson, and Washington directly from hotels, restaurants, and institutions through employee-drivers.

23. The purchase, transportation, and sale of restaurant grease by peddlers, the production of yellow grease by processors from restaurant grease purchased by them from

peddlers, and the sale of said yellow grease for shipment in foreign commerce, are integral and essential parts of the flow of yellow grease in foreign commerce. Any restraint on or disruption in, or interference with, the purchase of restaurant grease by peddlers and its sales to processors, and any suppression or elimination of competition in the purchase and sale of restaurant grease by peddlers, and the purchase of restaurant grease by processors from peddlers, necessarily and directly restrains and affects the flow of yellow grease in foreign commerce. Any restraint upon, or interruption of or interference with the purchase of restaurant grease from peddlers by processors, or the delivery of restaurant grease by peddlers to processors, necessarily directly restrains and affects the production of yellow grease by said processors and its flow in foreign commerce.

24. Beginning in the fall of 1954 and continuing thereafter to and including the month of May, 1959, defendant Union, certain of its officers and employees, including defendant Singer, a majority of the grease peddlers in Los Angeles County, California, including defendants Taylor, Brandt, and Klein, and certain processors, all engaged in a combination and conspiracy to suppress and eliminate competition among and between grease peddlers in the purchase and resale of restaurant grease, and to suppress and eliminate competition among and between processors in the purchase of restaurant grease from peddlers.

25. In the years 1952 to 1954, the level of prices paid to peddlers by processors for restaurant grease, and the prices received by processors for yellow grease, had fallen to less than half of the prices that had prevailed for several preceding years. The incomes of peddlers were substantially reduced, and as a consequence, peddlers sought to increase their volume of grease to maintain their incomes. This led to intensive competition among peddlers,

both as to prices offered to hotels and restaurants, and attempts of many peddlers to take over the grease producing accounts or "stops" of other peddlers.

26. In or about the early fall of 1954, defendant Singer, a business agent of defendant Union, and certain grease peddlers, caused most of the grease peddlers in Los Angeles County to become members of defendant Union. In soliciting their membership in said union, representatives of the union, including defendant Singer, proposed the following general plan or program: The union would increase the profits of the grease peddlers by increasing the margin between the prices paid by said peddlers for restaurant grease and the prices they would be paid by processors; that grease peddlers would be prevented from soliciting or buying grease from the accounts of other peddlers; that the processors would be required to deal only with those grease peddlers who were members in good standing in the union; and that unless grease peddlers became members of the union, they would have no place to sell their restaurant grease and would be forced out of business.

27. At a meeting of about ten peddlers in October, 1954, Singer urged the peddlers to become members of defendant Union. He said that the grease buyers had organized in New York City and that routes had been assigned among the peddlers so that each one had his own route, competition for accounts had been eliminated, and each peddler could reduce the price he paid for grease without fear that his account would be taken over by another peddler. Singer said that if the peddlers would join defendant Union, the same arrangement would be worked out in Los Angeles, and that everyone would have to go along or be put out of business by the Union.

28. In or about the month of October, 1954, a majority of the grease peddlers in Los Angeles County, including defendants Taylor, Brandt, Klein, and Carlis, joined the

defendant Union and became parties to and agreed to engage in the program which had been proposed by defendant Singer and other union representatives as set forth in paragraph 26, above.

29. At or about the same time, defendant Singer informed processors B & H and Allied that they would not be permitted by the defendant Union to purchase grease from non-union peddlers, and that if they did so, the union grease peddlers would not sell restaurant grease to them, and they would be picketed by the union. At that time B & H and Allied agreed with defendant Singer that they would not purchase restaurant grease from non-union peddlers, thereby becoming parties to the combination and conspiracy alleged.

30. During the entire period from October 1954 to May 1959, inclusive, the grease peddler members of defendant Union were established and recognized by defendant Union as a group or segment separate and distinct from employee members of defendant Union. Throughout the said period, meetings of the grease peddler members of defendant Union were called by defendant Singer or Al Menard, secretary-treasurer of defendant Union, and said meetings were held, separate from meetings of employee members of defendant Union. In April 1955, the grease peddler members of defendant Union were placed in a division of defendant Union named Local 626-B. The great majority of the grease peddlers in Los Angeles County, California, were members of defendant Union from 1954 to 1959, inclusive.

31. From the month of October 1954 to the month of May 1959, inclusive, defendant Singer was assigned by defendant Union to work with and to conduct the affairs of the grease peddler segment of the union.

32. Beginning in or about the month of November 1954 and continuing thereafter to the year 1957, defendant

Singer determined the prices to be paid by processors to peddlers for restaurant grease and the processors agreed to and did pay the prices so fixed and determined by defendant Singer.

33. Throughout the period from October 1954 to May 1959, inclusive, grease peddler members of defendant Union were instructed by defendant Singer to refrain from soliciting, or buying restaurant grease from, the accounts of other peddlers, and the grease peddler members of defendant Union agreed so to do.

34. During said period defendant Singer allocated accounts among union grease peddlers in all instances in which there were disputes as to said accounts, and defendant Singer, in conjunction with the committee, and sometimes with approval of the grease peddler segment of defendant Union, imposed fines or suspensions on grease peddler members failing to adhere to such allocations or who solicited or purchased grease from the accounts of other peddlers. During the period of such suspensions, the suspended grease peddlers were prohibited and prevented from selling their grease to processors.

35. From time to time, Singer allotted territories to various Union peddlers, and told other peddlers that they must stay out of those territories. Certain peddlers were suspended from the Union for failure to follow these instructions, and thereby prevented from selling grease to processors.

36. In November 1954, a majority of the Union grease peddlers formed a trade association named Los Angeles Grease Buyers Association, to help to improve the condition and standing of peddlers, by eliminating the theft of grease and adherence to a code of ethics. The association had no procedure under which it was able to discipline members or enforce adherence to its activities. In March,

1955, at a meeting of Union peddlers, defendant Singer told the peddlers to choose between the Union and the association, stating that the association could not lawfully do for the peddlers what the Union could do. He referred to the prosecution of rubbish collectors and a man named Matula, and said that this showed the danger of acting through an association as against action through a union. As a result of this meeting, the association became defunct.

37. In February 1955, defendant Singer called a strike against Washington Rendering Company, and established around the plant of said company a picket line composed of grease peddler members of defendant Union, because it had purchased restaurant grease from a grease peddler who was not a member in good standing in defendant Union. The plant was completely closed down because of this strike and picket line. Defendant Singer demanded that Washington agree not to make any further purchases of restaurant grease from any grease peddler who was not a member in good standing of defendant Union, as a condition to lifting the strike and removing the picket line. The strike was lifted and the picket line was removed when Washington agreed that it would not buy restaurant grease from non-union grease peddlers, and thereby became a party to the combination and conspiracy alleged.

38. In March 1955, Singer and Mike Grancich, business agents of defendant Union, went to the plant of a man named Schrader who was engaged in the processing of fish oils and told him that unless he stopped buying grease from two non-union peddlers, he would have union trouble. Schrader complied with this demand.

39. In 1955, Singer asked Sam Stone, owner of Allied Grease and Tallow Company, to write a $100 check to defendant Union to pay the initiation fee of a peddler named Galerkin, who theretofore had been a non-union peddler and who had agreed to join the Union if he would

thereby be enabled to sell his grease to processors. Mr. Stone issued the check. Galerkin was admitted to defendant Union, and began selling grease to Allied.

40. In November 1955, defendant Singer called a strike against Baker Rendering Company and established around the plant of said company a picket line composed of grease peddler members of defendant Union because said company allegedly had made a purchase of restaurant grease from a peddler who was not a member in good standing of defendant Union.

41. In January 1956, defendant Singer established a picket line around the processing plant of Harbor Industrial Sales, which had entered into the business of processing restaurant grease into yellow grease about the middle of December 1955. Harbor was purchasing restaurant grease from grease peddlers who were not members in good standing of defendant Union. This picket line was maintained for a period of several weeks. In addition, defendant Singer and the grease peddler segment of defendant Union sought to induce the grease peddlers who had been selling restaurant grease to Harbor Industrial Sales to join the union and to stop selling to that company. These efforts were successful and Harbor Industrial Sales ceased operations in April 1956 because of its inability to secure sufficient quantities of restaurant grease to continue its business.

42. Following the establishment of the picket line around the plant of Harbor Industrial Sales in early 1956, defendant Singer told the owner of that business that if he could learn the name of his landlord and the buyers to whom Harbor was selling yellow grease, that he would bring pressure through the Union to have Harbor's lease cancelled and to have the buyers stop dealing with Harbor. Singer said he did not want Harbor in the grease business.

43. In March 1956, the owners of B & H Processing Company were asked by Singer to loan $1,000 to a man named Bernard Kay, who had previously been operating as a non-union peddler, selling grease to Harbor Industrial Sales, and who had agreed to become a Union member. With knowledge that Kay was a poor credit risk, the owners of B & H loaned the money to Kay, because of fear of trouble with Singer and defendant Union unless they did so. Kay stopped selling to Harbor Industrial Sales and sold his grease to B & H for several weeks. The loan was never repaid.

44. In July 1958, a new company named Star Grease Company engaged in the processing of restaurant grease into yellow grease. A number of peddlers who had previously been selling restaurant grease to B & H Processing Company began to sell to Star Grease Company. As a result of this competition for the business of peddlers, the prices paid by processors for restaurant grease were increased.

45. At a meeting of the grease buyer segment of defendant Union in late August 1958, defendant Singer announced that thereafter no grease peddler would be permitted to pay more than one cent per pound for restaurant grease. This price of one cent constituted a substantial reduction from the prices which the peddlers had been paying for restaurant grease. At this meeting, defendant Singer gave instructions that all Union peddlers were to cease the sale of restaurant grease to Peterson Manufacturing Co. All grease peddlers who had been selling to said company immediately ceased such sales and thereafter made no sales of restaurant grease to Peterson. At this meeting, defendants Taylor, Brandt, and Klein were appointed members of a committee of the grease buyers segment of defendant Union to assist in policing, enforcing, and carrying out the program to suppress and eliminate

competition among grease peddlers and among processors. Early in 1959, upon the resignation of defendant Klein from said committee, defendant Carlis was appointed as a member of said committee, and served thereafter to and including the month of May 1959.

46. Following the instructions given by Singer in late August 1958, that Union peddlers were to stop selling grease to Peterson Manufacturing Co., Singer told the president of that company that the purpose of the Union was to improve the lot of peddlers and the processors buying from peddlers, and that the peddlers would not be permitted ever again to sell to Peterson. Following that conversation no Union peddler in good standing has ever sold grease to Peterson, even following the filing of the complaint.

47. Some of the grease peddlers who had been selling to Peterson transferred their restaurant grease sales to Star and to B & H, but a major part of the volume of restaurant grease which had previously gone to Peterson was transferred to Washington. Star appealed to defendant Singer and the grease peddler members of defendant Union to take action to cause more of the peddlers to transfer their business to Star.

48. In September 1958, Singer asked B & H Processing Company to help out Star Grease Company, which he said was having trouble selling its grease, by selling for Star about 80,000 pounds of grease. B & H sold this grease for Star, because they feared they would have trouble with Singer and defendant Union if they refused.

49. In early September 1958, defendant Singer was on a trip to Hawaii. During his absence, Star and B & H requested the union committee to reduce the price to be paid by processors to peddlers for restaurant grease. The committee refused to take action, and the owner of Star made

a trip to Hawaii, financed in part by B & H, to appeal to defendant Singer for favorable action on the requested reduction in prices paid by processors to peddlers for restaurant grease. Defendant Singer agreed to take action on the request upon his return to Los Angeles.

50. Following his return, at a meeting of the grease peddlers' segment of the union on September 18, 1958, defendant Singer called for a discussion of prices to be paid for restaurant grease by processors to peddlers. Defendant Singer then announced that the price would be reduced by ¾ cent per pound, effective on September 19, 1958. Beginning on September 19, B & H, Star, and Washington all reduced their prices ¾ cent per pound, and continued thereafter to pay this reduced price.

51. At the meeting on September 18, 1958, objections were made by some peddlers to the ruling that peddlers could not pay more than one cent per pound for restaurant grease, and a question was raised as to illegality of such a ruling. Defendant Singer emphatically stated that the one cent price was to be strictly followed, and that any peddler paying more would find himself in trouble. Singer said it would do no good for anyone to appeal to the federal or local governments, because the union had plenty of money and would fight any effort to interfere with the union's activities.

52. At a meeting of the grease peddlers' segment of the union on October 15, 1958, a complaint was made against a peddler for trying to get a price for restaurant grease from a processor higher than the reduced price fixed by defendant Singer on September 18. The peddler was sentenced by defendant Singer to a suspension of one month. Another peddler was accused of paying more than one cent per pound for restaurant grease and was called upon by defendant Singer for an explanation. One week later this peddler was suspended for six months by defendant Singer, and was put out of business.

53. At a meeting on October 15, defendant Singer announced that he intended to divide the sales of restaurant grease by peddlers equally between the three processors, and he called a meeting on October 16, 1958, to be attended by himself, the union committee, and the processors.

54. The meeting on October 16, 1958, was attended by defendants Singer, Taylor, Klein, and Brandt, and by owners of B & H and Washington. Defendant Singer announced that he was representing Star Grease Company. The processors were required to submit information concerning the volume of grease which they were purchasing from each peddler. The committee and defendant Singer reviewed these data and decided that certain peddlers would be shifted from Washington and B & H to Star in order to put all three processors on an approximately equal basis in the volume of grease purchased by them from peddlers. Defendant Singer announced the names of those peddlers who had previously been selling grease to Washington and B & H who would be required thereafter to sell to Star.

55. Immediately after this meeting, those peddlers named by defendant Singer were notified by the union committee of the action taken, and they ceased to sell grease to Washington and B & H and transferred their business to Star. Washington and B & H lost a substantial volume of grease from grease peddlers, with resultant reduction in their production and sales of yellow grease, and the grease sold by grease peddlers to these processors was so divided and allocated that each of the three processors thereafter got approximately one-third of the restaurant grease sold by grease peddlers.

56. During the period from August 29 to the end of 1958, defendant Singer, and the union committee composed of defendants Taylor, Brandt, and Klein, made investigations and conducted hearings on complaints that union

peddlers had solicited accounts of other peddlers, and had paid more for restaurant grease than the one cent maximum fixed by defendant Singer. Several peddlers were suspended for a month for violation of these orders. During the period of said suspensions, the suspended grease peddlers were prevented from engaging in the business of buying and selling restaurant grease.

57. In late 1958, Peterson made a purchase of grease from a peddler who had been suspended from the Union and Mike Grancich, business agent for defendant Union, called Peterson and said to stop buying grease from the peddler or Peterson would have labor trouble. Peterson complied with this demand because it wanted to avoid labor trouble.

58. In February 1959, after the owner of Washington Rendering Company publicly testified in a Congressional Committee concerning the aforesaid activities of defendant Singer and the defendant Union, several union peddlers, including defendants Taylor and Klein, stopped selling restaurant grease to Washington. Thereafter, for the first time since 1955, Washington made purchases of restaurant grease from non-union members. The union committee, at that time composed of Taylor, Brandt, and Carlis, arranged to have the trucks of said non-union peddlers followed to each of their accounts and subjected said non-union peddlers to harassment and threats of physical injury.

59. On May 12, 1959, a strike was called by defendant Union against Washington Rendering Company and a picket line was established by defendant Singer around the plant of said company, which picket line was composed primarily of grease peddler members of defendant Union. This strike continued for more than two months and virtually stopped the yellow grease business of Washington.

60. The strike was called ostensibly on the ground that Washington Rendering Company did not have a labor contract with defendant Union. In fact, the strike was called in reprisal against the owner of Washington Rendering Company for his opposition to the above-described activities of defendant Union. The strike was subsequently declared by the National Labor Relations Board to be an illegal strike.

61. On the same day that the complaint herein was filed on May 27, 1959, an indictment was returned against defendant Union and defendants Singer, Taylor, Brandt, and Klein, charging violation of the antitrust laws in substantially the same terms as are charged in this complaint. In June 1959, while the plant of Washington Rendering Company was closed down because of the strike by defendant Union, defendant Singer spoke to Morris Gurewitz, proprietor of Washington Rendering Company. Singer blamed Gurewitz for having caused the indictment by testifying before the Senate Committee. Singer said that the Union could keep the strike going against Gurewitz for years.

62. During the pendency of a motion by the National Labor Relations Board in the United States District Court for the Southern District of California for an injunction against the strike, defendant Singer told Morris Gurewitz that although the Court might issue a 30 or 60-day injunction against the strike, when that time was up the defendant Union would have Gurewitz right back where he was before. Singer referred to the loss of business suffered by Gurewitz as a result of the strike, and told Gurewitz that his troubles with the Union were not over and would get worse. Singer said that Gurewitz also had employees in other unions and that if Gurewitz got an injunction against defendant Union, he would have trouble with other unions.

63. In October 1959, Singer boasted to Gurewitz about the trouble which had been caused Gurewitz by Singer and the Union, and said that Gurewitz would have more trouble. Singer said that even if he had to go to jail, the unions would keep Gurewitz in hot water, and that there were plenty of other people in the Union to take care of Gurewitz. Singer said that when the Union was through with Gurewitz, then it would start in on Ben Cohen, of B & H Processing Company, who had also testified before the Senate Committee.

64. During the course of the proceedings in the companion criminal case, resulting in pleas of *nolo contendere* by defendants' Union, Singer, Taylor, Brandt, and Klein, the Government disclosed in a statement filed with the Court the activities of defendant Singer, and the committee composed of defendants Taylor, Brandt, Klein, and Carlis, described in detail in the foregoing paragraphs of this judgment. At no time has defendant Union, taken any disciplinary action against defendant Singer or the members of the committee, or terminated the existence of the committee, or expelled from membership in the Union any of said defendants or other grease peddlers.

65. At no time have any processors in the Los Angeles area taken action, or threatened to take action, to make use of peddlers for strike breaking purposes.

66. At no time have any processors in the Los Angeles area taken action, or threatened to take action, to substitute peddlers for driver-employees in the acquisition of restaurant grease.

67. Since this case was filed defendant Union submitted statements to the Court in the companion criminal case, signed by numerous peddler members of said Union, stating their conviction that it is desirable and necessary for the peddlers to have an organization to regulate the activities of the peddlers, including prevention of theft of grease

and paying too much for restaurant grease. These peddlers expressed their conviction that defendant Union is the only organization capable of accomplishing these results for them. The statements of each of these peddlers referred to the benefits which the peddlers derived from their Union membership and none of them mentioned or referred to any benefit which might be derived by any employees of processors by reason of peddler membership in the Union.

68. Every processor of yellow grease in the Los Angeles area has employees who are members of defendant Union.

69. There are in operation at the present time in the Los Angeles area only two processors of yellow grease who make any regular or substantial purchases of restaurant grease from peddlers—B & H Processing Company and Star Grease Company. William Saunders, owner of Star Grease Company, is a member of defendant Union. Henry Cohen, a partner in B & H Processing Company, is a member of defendant Union.

70. From the time it commenced business in July, 1958, to the present time, Star Grease Company has followed the policy and practice of buying grease only from those peddlers who were members of defendant Union. Since the filing of the complaint herein Star has continued to follow this policy and practice.

71. From the fall of 1954 to the present time, B & H Processing Company has followed the policy and practice of buying grease only from those peddlers who were members of defendant Union. Since the complaint was filed herein B & H consistently refused to purchase grease from non-union peddlers.

72. Between October, 1954, and the present time defendant Union, as a chartered affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and

Helpers of America, was subject to the provisions of the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

CONCLUSIONS OF LAW.

1. The activities of the defendants and co-conspirators constitute an unreasonable restraint upon foreign trade and commerce in yellow grease.

2. The defendants and co-conspirators have combined and conspired in unreasonable restraint of foreign trade and commerce in yellow grease in violation of Section 1 of the Sherman Act (15 U. S. C., § 1).

Final Judgment.

In accordance with the foregoing findings of fact and conclusions of law, It Is Ordered, Adjudged and Decreed:

I.

As used in this Final Judgment.

(a) Restaurant grease means waste grease resulting from the preparation of foods in kitchens of restaurants, hotels and institutions.

(b) Yellow grease means an inedible grease produced primarily by removal from restaurant grease of most of the moisture and impurities. It usually has a minimum melting point or titer of about 36 degrees centigrade; a yellowish color of about 57 FAS; no more than 2 per cent of moisture, impurities and unsaponifiables; and a minimum content of about 10 per cent or more of free fatty acids.

(c) Processor means a person engaged in the business of producing yellow grease from restaurant grease.

(d) Peddler, or grease peddler, means a person who is a self-employed entrepreneur engaged for his own account in the business of buying restaurant grease from restaurants.

hotels and institutions, transporting said grease in trucks to the plants of processors, and selling such restaurant grease to said processors.

(e) Local 626 means defendant Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

(f) Persons means any individual, partnership, corporation, association, or other legal entity.

II.

(a) The provisions of this Final Judgment applicable to defendant Local 626 shall apply to such defendant, to each of its members, officers, trustees, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

(b) The provisions of this Final Judgment applicable to defendants Meyer Singer, Lee Taylor, Hubert Brandt, Walter Klein, and Harold Carlis shall apply to each of said defendants, his agent and employees, and to all other persons in active concert or participation with said defendants or any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

III.

Since 1954, defendants Local 626, Meyer Singer, Lee Taylor, Hubert Brandt, Walter Klein, and Harold Carlis (hereinafter collectively referred to as the defendants) have engaged and continued to be engaged in a combination and conspiracy among themselves and others to suppress and eliminate competition in the gathering, purchase, sale, and distribution of yellow grease in violation of Sec-

tion 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

IV.

The defendant Local 626 is ordered and directed:

(a) To expel promptly from membership all grease peddlers;

(b) To refuse membership at any time in the future to any grease peddler;

(c) To expel from membership any member who becomes a grease peddler;

(d) To furnish a copy of this decree to all grease peddlers who are now members of Local 626.

V.

Each defendant is enjoined and restrained from:

(a) Entering into, adhering to, maintaining, furthering, or participating in any contract, agreement, understanding, plan, or program with any defendant, processor, peddler, or any other persons:

(1) To limit the number of peddlers who can engage in the gathering, purchase, or sale of restaurant grease;

(2) To allocate among peddlers the restaurants, hotels, or institutions from which restaurant grease may be purchased by peddlers;

(3) To allocate among processors the peddlers from whom processors may purchase restaurant grease;

(4) To allocate among processors the quantities of restaurant grease to be purchased from peddlers;

(5) To prevent processors from buying restaurant grease from peddlers of their own choice or prevent

peddlers from selling restaurant grease to processors of their own choice;

(6) To establish, maintain, fix, or determine the prices paid by third persons to restaurants, hotels, and institutions for restaurant grease;

(7) To establish, maintain, fix, or determine the prices for restaurant grease sold to processors by third persons, and the prices paid for restaurant grease by processors to third persons.

(b) Directly or indirectly persuading, inducing, or compelling, or attempting to persuade, induce, or compel any defendant, processor, peddler, or any other person, by boycott, strikes, or picketing, or by threats thereof, or by any other means, to do or participate in the doing of any of the things set forth in subparagraphs (1) to (7) of subsection (a) in this Section V.

VI.

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to a defendant at its or his principal office, subject to any legally recognized privilege, be permitted:

(a) Access during office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of such defendant, who may have counsel present, relating to any of the matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of such defendant, and without restraint or interference, to interview the officers or employees of such defendant, who may have counsel present, regarding any such matters.

Upon order of this Court made on the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, such defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

VII:

Defendant Local 626 is ordered and directed to pay all costs to be taxed in this case.

/s/ Wm. M. Byrne,
United States District Judge.

Dated: July 14, 1961.

Received copy of the within Findings of Fact, Conclusions of Law, and Final Judgment at 8:45 A. M. o'clock on 7th day of July, 1961.

(Illegible.)
Attorney for Defendants.

Approved as to form:

.....,
Attorney for Defendants.

Disapproved as to Form:

(Illegible.)
Attorney for Defendants.

APPENDIX "C."

Sherman Anti-Trust Act, Sections 1 and 4, 15 U. S. C. Sections 1 and 4:

"1. *Trusts, etc., in restraint of trade, illegal; exception of resale price agreements; penalty:*

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any

combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat 693."

"4. *Jurisdiction of courts; duty of district attorneys; procedure.*

"The several district courts of the United States are invested with jurisdictions to prevent and restrain violations of sections 1-7 of this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final degree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. July 2, 1890, c. 647, § 4, 26 Stat. 209; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167."

Clayton Act, Sections 6 and 20, 15 U. S. C., Section 17, and 29 U. S. C., Section 52:

"17. *Antitrust laws not applicable to labor organizations.*

"The labor of a human being is not a commodity or article of commerce. Nothing contained in the

antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws. Oct. 15, 1914, c. 323, § 6, 38 Stat. 731."

"52. *Statutory restriction of injunctive relief.*

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading

any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States. Oct. 15, 1914, c. 323, § 20, 38 Stat. 738."

Norris-LaGuardia Act, Section 4, 29 U. S. C. Section 104:

"104. *Enumeration of specific acts not subject to restraining orders or injunctions.*

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interest in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. Mar. 23, 1932, c. 90, § 4, 47 Stat. 70."

National Labor Relations Act, Section 8 (b) (1), 29 U. S. C., Section 158 (b) (1):

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."